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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

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BANKRUPTCY

FEDERAL TAX

REFUND. The debtors, husband and wife, filed for Chapter 7 in August 2008. The debtors' 2008 tax return requested a refund derived from earned income credit, child tax credit and excess withheld employment taxes. The trustee sought turnover of a portion of the refund, calculated by prorating the amount by the number of days in 2008 which occurred before the filing of the petition. The debtors argued that the tax credits should be entirely excluded from turnover as post-petition assets because the eligibility for the credits arose from a post-petition event, the injury of one of the debtors which lowered their income below the qualifying levels for the credits. The court held that the entire refund should be allocated pro rata for the portion of 2008 which occurred pre- and post-petition to bankruptcy and nonbankruptcy estate property. ***In re* Krahn, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,123 (Bankr. D. Kan. 2009)**.

FEDERAL FARM PROGRAMS

AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM. The NRCS has adopted as final regulations amending the regulations for the Agricultural Management Assistance program (AMA). Section 2801 of the Food, Conservation, and Energy Act of 2008 amended the AMA by expanding the program's geographic scope to include Hawaii and providing $15 million in mandatory funding for each of fiscal years 2008 through 2012. **74 Fed. Reg. 64591 (Dec. 8, 2009)**.

DAIRY. The Farm Service Agency has adopted as final regulations implementing the Dairy Economic Loss Assistance Payment (DELAP) program. The DELAP program assists dairy producers by providing payments to producers who produced and marketed milk in the United States at some time from February through July 2009. The payments provided by the DELAP program are intended to offset a portion of the dairy producers' losses resulting from milk prices that were far below production costs. **74 Fed. Reg. 67805 (Dec. 21, 2009)**.

KARNAL BUNT. The APHIS has adopted as final regulations amending the Karnal bunt regulations to remove certain areas or fields in Riverside County, CA, from the list of regulated areas based on a determination that those areas or fields meet the criteria for release from regulation of Karnal bunt, a fungal disease of wheat. **74 Fed. Reg. 67051 (Dec. 18, 2009)**.

PACKERS AND STOCKYARDS ACT. The plaintiffs were broiler chicken producers who raised the chickens under contracts with the defendant chicken processor. The defendant's payment schedule was based on rating the producers by the quality of their chickens and the cost of production. However, the chairman of the defendant corporation also produced chickens for the defendant and was compensated by the lesser of a weekly market price or 102 percent of the costs of raising the chickens. The plaintiffs claimed that the special treatment of the chairman, an insider in the corporation, violated 7 U.S.C. §§ 192(a), (b) of the Packers and Stockyards Act as "undue or unreasonable preference or advantage." The defendant argued that the plaintiffs had not shown any adverse effect on competition; therefore, no violation of Sections 192(a), (b) occurred. Although the appellate court in the first appeal acknowledged a substantial number of other circuits have held that the PSA sections require a showing of an adverse effect on competition, the court held that the plain language of the statutes was clear and unambiguous and contained no requirement of a showing of adverse effect on competition. The court noted that the contrary decisions were based on legislative history, preceding legislation and overall policy, but held that these factors were not sufficient to overcome the plain language of the statute. The court also noted that other sections of the statute did have explicit requirements of showing of adverse effect on competition; therefore, the omission of the requirement in Section 192(a), (b) indicated that no such requirement was intended by the Congress. On further appeal, the court, sitting en banc, reversed in a nine to seven ruling, holding that a finding of adverse impact on competition was required for a violation of 7 U.S.C. §§ 192(a), (b) of the Packers and Stockyards Act. **Wheeler v. Pilgrim's Pride Corp., 2009 U.S. App. LEXIS 27642 (5th Cir. 2009), *rev'g en banc*, 536 F.3d 455 (5th Cir. 2008)**.

SWINE. The APHIS has adopted as final regulations amending the swine health protection regulations to clarify the applicability of the regulations regarding the treatment of garbage that consists of industrially processed materials. The final rule states that such materials are subject to the same treatment requirements as other regulated garbage, except for materials that meet the definition of processed product which is added by the regulations. **74 Fed. Reg. 65014 (Dec. 9, 2009)**.

TUBERCULOSIS. The APHIS has issued interim regulations amending the bovine tuberculosis regulations to change Antrim, Charlevoix, Cheboygan, Crawford, Emmet, and Otsego counties in Michigan, to modified accredited advanced status. **74 Fed. Reg. 67051 (Dec. 18, 2009)**.

VETERINARIANS. The APHIS has adopted as final regulations amending the regulations regarding the National Veterinary Accreditation Program. The amendments adjust the scope of two accreditation categories to require initial accreditation training for veterinarians seeking accreditation; to require newly accredited veterinarians to renew their accreditation

three years after completing initial accreditation training; and to reduce the training required for renewal of accreditation. **74 Fed. Reg. 64998 (Dec. 9, 2009).**

FEDERAL ESTATE AND GIFT TAXATION

GENERATION SKIPPING TRANSFERS. The decedent and a pre-deceased spouse had established a trust. On the death of the pre-deceased spouse, the trust passed to the decedent and was split into two trusts. The pre-deceased spouse's estate claimed a QTIP martial deduction for the trust passing to the decedent. The decedent transferred income interests in the trust to the remainder holders, triggering the transfer of the remainder interests. The transfers were taxable gifts but the recipients reimbursed the decedent for the gift taxes on the transfers. The decedent died within three years after the transfers and the IRS included the gift taxes in the decedent's estate. The court held that the gift taxes were included in the gross estate because, under I.R.C. § 2035(b), gift taxes paid by the decedent were included in the gross estate if made within three years of death. The court held that the gift of QTIP property was covered by Section 2035(b), although I.R.C. § 2207A(b) allows for recovery of gift tax liabilities from QTIP. The court noted that Section 2207A(b) does not provide that donees of QTIP are liable for gift taxes. **Estate of Morgens v. Comm'r, 133 T.C. No. 17 (2009)**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer claimed various business expense deductions relating to three businesses in which the taxpayer claimed to have invested in one tax year. The deductions offset most of the taxpayer's wages from employment as an electrician. The IRS assessed a deficiency after disallowing most of the business expense deductions and increasing the taxpayer's income based on reconstruction of income from bank records. The taxpayer failed to provide any substantiation of the business expenses except for vague testimony. The court upheld the IRS use of bank records to determine income and expenses because the taxpayer failed to substantiate the taxpayer's claims as to income and expenses. **Robertson v. Comm'r, T.C. Memo. 2009-302**.

CHARITABLE DEDUCTION. The taxpayer partnership owned property along a state toll road where the state department of transportation (DOT) proposed to build an interchange. The DOT sought to purchase the portion of the property near the interchange through condemnation but the taxpayer resisted the offer because the amount was too low. After negotiations, the taxpayer agreed to transfer the property in a part sale, part gift transaction and the taxpayer claimed a charitable deduction for the gift part. The taxpayer provided substantial compliance with the substantiation requirements for charitable contributions and provided evidence of the fair market value of the property transferred. The court held that the transfer agreement demonstrated the donative intent of the taxpayer and the substantial compliance with the regulations was sufficient to support a charitable deduction for the gift part of the transfer. **Consolidated Investors Grp. v. Comm'r, T.C. Memo. 2009-290**.

COOPERATIVES

ALCOHOL FUEL CREDIT. The taxpayer was an exempt farmers' cooperative which owned over 50 percent of an LLC taxed as a disregarded entity. The LLC owned and operated an ethanol production facility with a capacity over 60 million gallons and an actual production over 15 million gallons for some of the tax year. The cooperative sought to claim the alcohol fuel credit as a small ethanol producer based on the partial ownership of the LLC. In a Field Attorney Advice letter, the IRS ruled that the cooperative and LLC were considered a single entity; therefore, the cooperative could not be classified as a small ethanol producer because the LLC had a capacity of over 60 million gallons for some portion of the tax year. **F.A.A. 20095001F, Dec. 14, 2009**.

DEPENDENTS. The taxpayer was the unmarried parent of a child subject to a court-ordered shared physical custody agreement with the child's other parent. Under the agreement, the other parent had more time with custody of the child than the taxpayer during the tax year. Both parents claimed the child as a dependent and filed for the child care tax credit and child tax credit. The taxpayer also filed using the head of household status. The taxpayer argued that the taxpayer provided more than one-half of the support for the child and had more time with the child, if one counted only the waking hours. The court held that the other parent was entitled to the dependent deduction, child care tax credit and child tax credit because the other parent had physical custody for more of the calender year than the taxpayer. The court noted that the physical custody condition of I.R.C. § 152(e)(1) controlled even where the other parent provided more than one-half of the support for the child. The court also denied the taxpayer the use of the head of household status. **Bjelland v. Comm'r, T.C. Memo. 2009-297**.

EMPLOYMENT TAXES. In a Chief Counsel Advice letter, the IRS has ruled that (1) for purposes of calculating the period of limitations for assessments, I.R.C. § 6501(a), and the period of limitations for refunds and credits (POLRC), I.R.C. § 6511(a), with respect to employment taxes, quarterly Forms 941 are not aggregated and treated as a single return for a taxable year because the limitations periods may vary depending on the date each quarterly Form 941 is filed; and (2) an overpayment of employment tax in one quarter cannot be moved to another quarter if the POLRC has expired for the quarter containing the overpayment before an interest-free adjustment or claim for refund or credit has been made. **CCA**

Ltr. Rul. 200950012, Sept. 24, 2009.

INFORMATION RETURNS. The IRS has issued guidance clarifying that, for calendar year 2009, reporting entities that are required to furnish information statements under I.R.C. § 6045 have until February 16, 2010, to report the information required on these forms. Affected information statements include Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, Form 1099-S, Proceeds From Real Estate Transactions, and certain information (payments to attorneys or substitute payments by brokers in lieu of dividends or interest) reported on Form 1099-MISC, Miscellaneous Income. The guidance modifies the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G and applies to the reporting of items from calendar year 2009 only. **Notice 2010-9, I.R.B. 2010-3**.

INNOCENT SPOUSE. The taxpayer was married and assisted in the spouse's rental business. Although the spouse managed all of the financial aspects of the business, the business records were available to the taxpayer. The taxpayer was not otherwise employed during the tax years in question. The spouse prepared the joint income tax returns for the business and the couple and the taxpayer signed the returns without investigating the truth of the amounts on the returns. The returns claimed that no tax was due. The taxpayer sought innocent spouse relief for deficiencies assessed based on amounts claimed for the business. The court held that innocent spouse relief was properly denied for the taxpayer because the taxpayer participated in the business and had ample opportunity to review the business and tax records. The court also denied equitable tax relief because the couple was still married at the time of the case and the taxpayer had reason to know that the income tax returns were not correct. **Olson v. Comm'r, T.C. Memo. 2009-294**.

IRA. The taxpayers, husband and wife, owned a 401(k) account and were advised to transfer the funds to an IRA and then to convert the IRA to a Roth IRA. Although the financial advisor had informed the taxpayers about the income limitations on the conversion, the taxpayer did not have sufficient information about their modified adjusted gross income for the year because one of the taxpayers owned interests in a pass-through entities which had not reported the taxpayer's share of income. By the time the taxpayer knew that their income exceeded the limitations for the conversion, the time for electing to recharacterize the conversion had elapsed. The IRS granted an extension of time to make the election to recharacterize the conversion of the IRA to a Roth IRA. **Ltr. Rul. 200950059, Sept. 15, 2009**.

Upon termination of employment, the taxpayer received a distribution from a pension plan, most of which was rolled over to an IRA. Over the next five years, the taxpayer received distributions of $69,000, $44,000, $81,000, $80,000 and $66,000, leaving about $44,000 in the IRA. The taxpayer claimed the disability exception to the 10 percent tax on early distributions but failed to provide any evidence of the disability other than to claim cancer treatments. In addition, the taxpayer argued that the amounts were eligible for the substantially equal annual payments exception. The court held that the taxpayer was not eligible for the disability exception for failure to demonstrate the nature and extent of the disability. The court held that cancer treatment alone was not a sufficient disability. In addition, the court held that the taxpayer was not eligible for the substantially equal annual payments exception because the payments would deplete the IRA within six years, far short of the taxpayer's life expectancy. The case did not discuss any eligibility for the medical expense exception. **Welker v. Comm'r, T.C. Summary Op. 2009-193**.

LEGAL FEES. The taxpayer purchased a car dealership and incurred legal fees for legal advice and documents produced by an attorney. A portion of the legal fees was shown to arise as part of the financing of the purchase of the dealership inventory of automobiles. The court held that these legal fees could be included in the cost of goods sold for the vehicles. **West Covina Motors, Inc. v. Comm'r, T.C. Memo. 2009-291**.

LIFE INSURANCE. The taxpayers, husband and wife, owned a life insurance policy on the wife. The wife borrowed against the policy and interest on the loan was added to the policy over several years until the amount owed exceeded the cash value of the policy. The insurance company cancelled the policy and issued From 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance, Contracts, etc. for the amount owed on the policy. The court held that the taxpayer did not receive discharge of indebtedness income because the insurance company used the cash value of the policy to offset the loan amount. Instead, the court held that the taxpayers received income from a life insurance contract to the extent the amount received or deemed received exceeded the initial investment in the policy. The taxpayer had paid $500,000 for the policy and the cash value of the policy at termination was $1,065,224.11, resulting in $565,224.11 of taxable income. **McGowen v. Comm'r, T.C. Memo. 2009-285**.

LIMITED LIABILITY COMPANY. The taxpayer was the sole owner of a limited liability company (LLC) which did not file a Form 8832, Entity Classification Election, to have the LLC taxed as a corporation. The LLC failed to file Forms 941, Employer's Quarterly Federal Tax Return, for several quarters and the IRS filed Notice of Intent to Levy against the taxpayer for collection of the taxes. The taxpayer argued that the LLC was leased to another party; therefore, the taxpayer was not the responsible officer of the LLC for the taxes. The court held that any third party lease was irrelevant as to whether the taxpayer, as sole owner of the LLC, a disregarded entity, was liable for the employment taxes incurred by the LLC. **Boudreau v. Comm'r, T.C. Summary Op. 2009-195**.

LOSSES. The taxpayer had exercised stock options received as part of employment. The taxpayer left the employment and started trading securities. The value of the stock acquired through options declined dramatically in 2000. The taxpayer used a CPA to file income tax returns for 1999 and did not make an election to use marked-to-market accounting as to the stock. After obtaining new tax advice in 2000, the taxpayer filed the election to use mark-to-market accounting in April 2001 with an extension request for the

2000 return. The IRS denied the election and request for extension of time to make the mark-to-market election, resulting in the losses being treated as capital losses. Under *Rev. Proc. 99-17, 1999-1 C.B. 503*, a taxpayer must file a statement electing the mark-to-market accounting method no later than the due date for the tax return for the year immediately preceding the election year. This statement must be attached to that return or to a request for an extension of time to file that return. The taxpayer was therefore required to make an election for 2000 by April 17, 2000, the due date of the federal income tax return for 1999, the year preceding the year in which the election was to be effective. The court held that the April 2001 election was 12 months too late and was properly denied. The court noted that such a late election would allow a stock trader to use hindsight to the taxpayer's advantage because the value of the stock could significantly change over the period of the delay in making the election. **Kohli v. Comm'r, T.C. Memo. 2009-287**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company taxed as a partnership. One of the taxpayer's members died in a tax year but the LLC failed to make the election to adjust the basis of its property under I.R.C. § 754 for that tax year. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 200950031, Sept. 2, 2009**.

The taxpayer was a partnership which was technically terminated under I.R.C. § 708(b)(1)(B) in a tax year. The partnership failed to make the election to adjust the basis of its property under I.R.C. § 754 for that tax year. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 200951007, Aug. 3, 2009**.

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 2010 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2010	$5,115,100	$3,653,600

These amounts are both less than the amounts for 2009. The $5,115,100 figure is the dividing line for 2010 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate. Where the amount of seller financing exceeds the $5,115,100 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $3,653,600 or less (for 2010), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 2010-2, I.R.B. 2010-3**.

S CORPORATIONS

GROSS INCOME. The taxpayer was the sole shareholder of an S corporation. The taxpayer and the corporation were subject to a criminal investigation and charges for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). The criminal proceedings resulted in lost business and the corporation was forced to sell assets in 1998, resulting in taxable gain. However, the proceeds of the asset sales were placed in escrow under court jurisdiction and subject to disbursement for any fines levied in the criminal case. The court ordered the escrow funds to be paid in partial satisfaction of the fines in 2000. The issue was whether the capital gains from the asset sales were taxable in 1998 or 2000. The court held that the capital gains were taxable in 2000 because the taxpayer did not have control or possession of the proceeds while they were in escrow and did not receive the benefit of the proceeds until the proceeds were used to satisfy the fines. The appellate court affirmed in a decision designated as not for publication. **Carione v. Comm'r, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,124 (2d Cir. 2009), *aff'g*, T.C. Memo. 2008-262**.

SAFE HARBOR INTEREST RATES

January 2010

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.57	0.57	0.57	0.57
110 percent AFR	0.63	0.63	0.63	0.63
120 percent AFR	0.68	0.68	0.68	0.68
		Mid-term		
AFR	2.45	2.44	2.43	2.43
110 percent AFR	2.70	2.68	2.67	2.67
120 percent AFR	2.95	2.93	2.92	2.91
		Long-term		
AFR	4.11	4.07	4.05	4.04
110 percent AFR	4.53	4.48	4.46	4.44
120 percent AFR	4.94	4.88	4.85	4.83

Rev. Rul. 2010-1, I.R.B. 2010-2.

SOCIAL SECURITY. Because there was no increase in the Consumer Price Index from the third quarter of 2008 to the third quarter of 2009, most SSA amounts will remain the same for 2010. Beginning with the January 2010 payment, the monthly social security standard benefit payment remains at $674 for an individual and $1,011 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2010 remains at $106,800, with all wages and self-employment income subject to the medicare portion of the tax. For retirees under age 65, the retirement earnings test exempt amount remains at $14,160 a year, with $1 withheld for every $2 in earnings above the limit. The retirement earnings test exempt amount (the point at which retirees begin to lose benefits in conjunction with their receipt of additional earnings) for individuals age 62 through 64, remains $37,680 a year for the year in which an individual attains age 65; the test applies only to earnings for months prior to reaching age 65. One dollar in benefits will be withheld for every $3 in earnings above the limit, and no limit on earnings will be imposed beginning in the month in which the individual reaches retirement age. The "old-law" contribution and benefit base under title II of the Act will remain $79,200 for 2010. The amount of earnings required for a quarter of coverage increases to $1,120. **http://www.ssa.gov/pressoffice/factsheets/colafacts2010.htm**

TAX SCAMS. The taxpayers invested in a tax scam promoted by a tax return preparer by purchasing an interest in a landfill which purported to produce alternative fuels. The taxpayer then filed Schedule C and Form 8907, Nonconventional Source Fuel Credit, to claim the credit that offset most of their tax liability of $4,215. The landfill did not produce any fuels and the tax preparer was the subject of a civil injunction lawsuit by the IRS to prevent

promotion of the scam. The court held that the nonconventional fuel credit was properly denied by the IRS. No penalty was imposed by the IRS so the court did not consider any issue involving the reasonableness of the taxpayers' reliance on the tax return preparer's advice. **Finney v. Comm'r, T.C. Memo. 2009-298**.

LABOR

AGRICULTURAL LABOR. The plaintiff was employed by the defendant which owned and operated a fruit storing, packing and shipping facility. The plaintiff worked in the shipping department, loading and unloading trucks and eventually supervising other workers. The plaintiff was discharged and sued for unpaid overtime wages under the Washington Minimum Wage Act. The defendant argued that the plaintiff was not covered by the Act because the plaintiff was an agricultural employee. The trial court agreed and ruled that the plaintiff was an agricultural employee because the plaintiff's work involved agricultural produce. The plaintiff appealed, arguing that the agricultural employment exemption applied only to workers on farms. The appellate court noted that the Act exempts from overtime pay any person employed "in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity." Wash. Code § 49.46.130(2)(g)(ii). The court held that the Act contained no limitation that such work be performed only on a farm and upheld the trial court ruling. **Elliott v. Custom Apple Packers, Inc., 2009 Wash. App. LEXIS 2820 (Wash. Ct. App. 2009)**.

STATE TAXATION

AGRICULTURAL USE. The plaintiff purchased 220 rural acres in 2004 and leased the land for cattle pasture in 2005, 2006 and 2007 during the grazing seasons. The county assessor classified the land for 2007 as vacant but the classification was reversed by the state board of assessment appeals because the leasing of the land as cattle pasture in 2005 and 2006 constituted agricultural use. The county appealed, arguing that the land did not qualify because it was not continuously used for farming or ranching during 2005 and 2006. The appellate court disagreed and held that the agricultural use of pasture land did not need to be continuous. The court noted that such land was rarely used throughout a calendar year because of weather and growing conditions which caused variations in suitability for pasture grazing. **Aberdeen Investors, Inc. v. Adams County Board of County Commissioners, 2009 Colo. App. LEXIS 1906 (Colo. Ct. App. 2009)**.

VETERINARIANS

DAMAGES. The plaintiff owned a scarlet macaw which was treated by the defendant veterinarian. The bird often accompanied the plaintiff to work, engaged with the plaintiff's customers and participated in family gatherings. The defendant performed two operations on the bird to cure a cloacal prolapse but the bird died from complications after the second operation. The plaintiff sued the defendant for professional negligence and sought special damages for emotional distress, loss of companionship, fair market value of the bird and the medical expenses. The defendant sought to dismiss the claims for special damages, arguing that the bird was personal property and could not be the source of a claim for emotional distress or other special damages. The trial court dismissed the claims for emotional distress and instructed the jury that any awarded damages were limited to loss of the fair market value of the bird. The jury verdict awarded no damages to the plaintiff. The court held that, under existing Arizona law, a pet owner could not recover damages for emotional distress from a negligent harming of the pet. The court also refused to expand Arizona law to allow such damages. **Kaufman v. Langhofer, 2009 Ariz. App. LEXIS 778 (Ariz. Ct. App. 2009)**.

ZONING

CONFINED ANIMAL FEEDLOT OPERATION. The plaintiffs sought to obtain a conditional use permit to expand an existing cattle feedlot from 300 to 650 animals. The plaintiffs made several attempts to improve the property so as to avoid contamination of a nearby creek and other environmental problems. The county board of commissioners eventually denied the application "because it will create an unreasonably adverse affect [sic] because of noise, odor, glare, and/or general unsightliness for nearby property owners." The standard of denial was required by the county ordinance. The plaintiff appealed the decision on the basis that the decision was not substantially supported by any factual basis in the record before the commissioners. The court noted that the evidence in the record regarding the general unsightliness or odor of the plaintiff's operation included: (1) a concern over mud left on the road on a prior occasion, (2) a concern over manure stockpiled at the site (resulting in both odor and unsightliness), (3) an unsubstantiated complaint about dead animals at the site, (4) a complaint in regarding empty silage bags blowing onto a neighbor's property, and (5) a complaint regarding odor. The court stated that a denial of the permit also required a finding of curtailment of customer trade by neighboring businesses. The court found no evidence of such curtailment. The court held that the board of commissioners had failed to support their findings with facts on record and therefore should have approved the conditional use permit. In addition, the court noted that the county planning commission had identified several conditions which should be imposed as part of the conditional use permit and that these conditions alleviated most of the concerns expressed by neighbors. The opinion is designated as not for publication. **In the Matter of an Application by Colleen Stuckmayer and Robert Hennen for a Conditional Use Permit, 2009 Minn. App. Unpub. LEXIS 1331 (Minn. Ct. App. 2009)**.

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